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NO. _____

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1987

THOMAS W. JONES,

Petitioner

v.

LAWRENCE N. VERBIEST,
ED CAREY, JR., Individually and as
Wayne County Director of Elections

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Did the 1980 amendment to 28 U.S.C. § 1331 repeal by implication, in whole or part, 28 U.S.C. § 1343 (a) (3)?

2. Is it proper for a District Court to ignore an Emergency Motion for Summary Judgment in a ballot access case when there are time deadlines for printing of the official ballots ?

3. Does the abstention doctrine of Pullman v. Railroad Commission of Texas, 312 U.S. 496 (1941) violate the acts of Congress defining the jurisdiction of the lower federal courts and thereby violate the following provisions of the Constitution- Art. I, Sec. 1, Art. 1, Sec. 8, cl. 18, Art. III, Sec. 1 and Sec. 2, cl. 1, Art. VI and Sec. 5 of the Fourteenth Amendment ?

4. If such abstention doctrine is constitutional does a U.S. District Court violate such doctrine (a) by dismissing a case when there is no state court proceeding pending (also causing statute of limitations problems), and (b) by failing to use a certification procedure to the State's Supreme Court that is a Rule of the District

Court and when the State Supreme Court has a corresponding certification rule to receive the District Court's questions ?

5. Does the separate is not equal doctrine of Brown v. Board of Education, 347 U.S. 483 (1954) apply to state ballot access laws by which candidates for the same office get their names printed on official ballots such that many of this Court's ballot access cases since 1968 have been wrongly decided or that such cases have been rightly decided for the wrong reasons?

6. Does a State violate the No Title of Nobility Clause of Art. I, Sec. 10 by giving "heredity" ballot status to the candidates of "major" political parties based on prior election results for specific candidates of such parties ?

7. Have many "modern" 42 U.S.C. S 1983 cases been wrongly decided by failing to distinguish between federally unconstitutional acts or omissions done "under color of State law" or "under State office" ?

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OPINION BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit, Case No. 86- 2188 was given a "NOT FOR PUBLICATION" label and is thus not reported but appears as Appendix A. Such opinion affirmed the order of dismissal of the U. S. District Court for the Eastern District of Michigan, Case No. 86- CV- 72480- DT which was also not reported but which appears as Appendix B. The Complaint appears as Appendix C.

STATEMENT OF GROUNDS ON WHICH JURISDICTION IS INVOKED

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on January 4, 1988. This petition for a writ of certiorari was filed less than ninety (90) days from that date. The jurisdiction of this court is invoked under 28 U.S.C. § 1254 (1).

Provisions involved

United States Constitution

Art. I, Sec. 10, cl.1. [in relevant part] No State shall ... grant any Title of Nobility.

14th Amendment, Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Laws

28 U.S.C. § 1331. The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1343. [in relevant part] (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: ...

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; ... .

28 U.S.C. S 2201. In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 or a proceeding under section 505 or 1146 of title 11, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. S 2202. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

R.S. S 1979 (42 U.S.C. S1983). Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

R.S. S 722 (42 U.S.C. S1988). The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for

the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C. 1681 et seq.], or title VI of the Civil Rights of 1964 [42 U.S.C. 2000d et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

Michigan Compiled Law [MCL] Sections Involved

For clarity in multi- sentence sections each sentence has a [bracketed number] added which is not in the law.

MCL 168.162. A general primary of all political parties shall be held in every election precinct in this state on the Tuesday succeeding the first Monday in August preceding every general November election, at which time the qualified and registered electors of each political party within every senatorial district and

every representative district shall vote for party candidates for the offices of state senator and representative, to be filled at the November election: Provided, That this section shall not apply to parties required to nominate candidates at caucuses or conventions.

MCL 168.163 [1] To obtain the printing of the name of a person as a candidate for nomination by a political party for the offices of state senator or representative under a political party heading upon the official primary ballots in the various election precincts of the district when the district when the district is comprised of 1 county or less, there shall be filed with the county clerk of that county, nominating petitions signed by a number of qualified and registered electors residing in the district equal to not less than 1% nor more than 4% of the number of votes cast by the party in the district for secretary of state at the last preceding November election; and, in the case of a candidate for either of the offices in a district comprising more than 1 county to obtain the printing of the name of a candidate of a political party under a particular party heading upon the official primary ballots in the various election precincts of the district, there shall be filed with the secretary of state nominating petitions signed by a number of qualified and registered electors residing in the district equal to not less than 1% nor more than 4% of the number of votes cast by the party for secretary of state in the district at the last preceding general November election. [2] Nominating petitions shall be in the form as prescribed in section 544. [3] The secretary of state and the various county clerks shall receive nominating petitions for filing in accordance with this act up to 4 p.m. the ninth Tuesday preceding the August primary. [4] In a county entitled to 1 or more state

representatives in the state legislature, to obtain the printing of the name of a candidate of a political party under the particular party heading upon the primary election ballots in the various voting precincts of the district, there shall be filed by each candidate with the county clerk of the county of which the district forms a part, a nominating petition signed by a number of registered and qualified electors residing in the district equal to not less than 1% nor more than 4% of the number of votes that the political party cast in the district for secretary of state at the last preceding November election. [5] In lieu of filing a nominating petition, a filing fee of $100.00 may be paid to the county clerk, or in the case of candidates in a district comprising more than 1 county to the secretary of state, payment of the fee and certification of the candidate's name paying the fee shall be governed by the same provisions as in the case of nominating petitions.
[6] The fee shall be deposited in the general fund of the county or state and shall be returned to all candidates who shall be nominated and to a like number of candidates who are next highest in order thereto in the number of votes received in the primary election and in case 2 or more candidates shall tie having the lowest number of votes allowing a refund hereunder, the sum of $100.00 shall be divided or prorated among them. [7] A refund of a deposit shall not be made to a candidate who withdraws.

MCL 168.532 [1] A political party whose principal candidate received less than 5% of the total vote cast for all candidates for the office of secretary of state in the last preceding state election, either in the state or in any political subdivision affected, shall not make its nominations by the direct primary method. [2] The

nominations of all candidates of such parties shall be made by means of caucuses or conventions which shall be held and the names of the party's nominations filed at the time and manner in section 686a of this act. [3] The term "principal candidate" of any party shall be construed to mean the candidate whose name shall appear nearest the top of the party column.

MCL 168. 560a. A political party the principal candidate of which received at the last preceding general election a vote equal to or more than 1% of the total number of votes cast for the successful candidate for secretary of state at the last preceding election in which a secretary of state was elected is qualified to have its name, party vignette, and candidates listed on the next general election ballot.

MCL 168. 685 (1) [1] The name of a candidate of a new political party shall not be printed upon the official ballots of an election unless the chairman and secretary of the state central committee of the party filed with the secretary of state, at least 3 months before the primary election, a certificate signed by them bearing the name of the party, and unless accompanying the certificate there was filed petitions bearing the signatures of registered and qualified electors equal to not less than 1% nor more than 4% of the number of votes, the successful candidate for secretary of state received at the last election in which a secretary of state was elected. [2] The petitions shall be signed by at least 100 residents in each of at least 9 congressional districts of the state and not more than 35% of the minimum required number of the signatures may be resident electors of any 1 congressional district. [3] All signatures

appearing upon the petitions shall have been obtained within 6 months immediately preceding the date of filing. [4] The validity and authenticity of the signatures may be determined in the same manner as provided for initatory and referendary petitions in section 9 of article 2 of the state constitution of 1963. [5] The petitions shall be in substantially the following form:

PETITION TO FORM NEW POLITICAL PARTY

We, the undersigned, duly registered electors of the city, township (strike one) of ..... county of ..... state of Michigan, residing at the places set opposite our names hereby declare our intention to organize the ..... party, and respectfully request the secretary of state, in accordance with section 685 of Act No. 116 of the Public Acts of 1954, as amended, to receive the certificate and vignette of our party, tendered herewith, for filing, and place the names of our candidates on the ballot at the ..... election.

Warning: Whoever knowingly signs petitions to organize more than 1 new state political party, signs a petition to organize a new state political party more than once or signs a name other than his own, is violating the provisions of the Michigan election law.

.....

.....

.....

(2) The size of all organizing petitions shall be 8- 1/2 inches by 13 inches and shall be printed in the following type sizes. The words "petition to form new political party " and the name of the proposed political party shall be in 24- point boldface type; the word "warning" and the language contained therein shall be in 12-

point boldface type.

(3) [1] A political party, the principal candidate of which received a vote equal ot less than 1% of the total number of votes cast for the successful candidate for the office of secretary of state at the last preceding election in which a secretary of state was elected shall not have the name of any candidate printed on the ballots at the next ensuing election, nor shall a column be provided on the ballots for that party. [2] A party so disqualifed may again qualify and have the names of its candidates printed in a separate party column on each election ballot in the manner set forth in subsection (1) for the qualification of new parties. [3] The term "principal candidate" of any party means the candidate whose name shall appear nearest the top of the party column.

(4) A political party which complied with this section is subject to section 560b in order to have the name of that party, its vignette, and its candidates appear on the general election ballot.

MCL 168. 686a [1] The nomination of candidates for political parties entitled to a position on the ballot which failed to have at least 1 candidate who polled at least 5% of the total vote cast for all candidates for secretary at the last preceding election at which a secretary of state was elected shall be made as provided in section 532. [2] If county caucuses and state conventions are held, they shall be held at the times set forth hereafter: county caucuses at. least 71 days before the the date set for the August primary: state conventions at least 64 days before the date set for the August primary.

[3] County caucuses may nominate candidates for the office of representative in congress, state senator, and state representative

if the offices represent districts contained wholly within the county, and for all county and township offices. [4] The names, mailing addresses, and office to which nominated of all candidates so nominated shall be certified by the chairman and secretary of the caucus to the county clerk with 24 hours after the conclusion of the caucus. [5] Accompanying the certification shall be an affidavit of identity for each candidate named in the certificate as provided in section 558 and a separate written notice of acceptance of nomination signed by each candidate named on the certificate. [6] The form of the certificate of acceptance shall be prescribed by the secretary of state. [7] The names of candidates so certified shall be printed on the ballot for the forthcoming election. [8] The name of a candidate shall not be printed on the ballot unless the notice of acceptance and the affidavit of identity accompanies he certificate. [9] Candidates nominated and certified shall not be permitted to withdraw.

[10] The county caucus may also select the number of delegates to the state convention to which the county is entitled and shall select its own officers and name its own county committee.

[11] The state convention shall be held at the time and place indicated in the call. [12] The convention shall consist of delegates selected by the county caucuses. [13] The convention may fill vacancies in a delegation from qualifed electors of that county present at the convention. [14] The convention may nominate candidates for all state offices. District candidates may be nominated at district caucuses held in conjunction with the state convention attended by qualified delegates of the district. [15] If delegates of a district are not present, a district caucus shall not be held for that district and candidates shall not be nominated for that district. [16]

district and candidates shall not be nominated for that district. [16] The names, mailing addresses, and offices to which nominated of the candidates nominated for state or district offices, within 24 hours after the conclusion of the convention, shall be certified and the chairman and secretary of the state convention to the secretary of state. [17] Accompanying the certification shall be an affidavit of identity for each candidate named in the certificate as provided in section 558 and a separate written notice of acceptance and nomination signed by each candidate named on the certificate. [18] The form of the certificate of acceptance shall be prescribed by the secretary of state. [19] The names of candidates certified shall be printed by the ballot for the forthcoming election. [20] The name of a candidate shall not be printed on the ballot unless the notice of acceptance and the affidavit of identity accompanies the certificate. [21] Candidates so nominated and certified shall not be permitted to withdraw.

STATEMENT OF THE CASE

This case procedurally involves the abstention doctrine in civil cases and on the merits the facial constitutionality of ballot access laws that are separate and unequal for candidates of different political parties for the same office.

Jurisdiction in the District Court was alleged to arise under 28 U.S.C. SS 1331 and 1343 (a) (3). The district court dismissed the case without prejudice on abstention grounds. A 3 judge panel of the U.S. Court of Appeals for the Sixth Circuit affirmed such dismissal. The complaint alleges that Michigan's ballot access laws for a state district office (State Senator, District 3) on their face violate the U.S. Constitution, the no State Title of Nobility clause of Art. I, Sec. 10 and Section 1 of the Fourteenth Amendment. Declaratory and injunctive relief and costs was requested in the Complaint via 28 U.S.C. SS 2201, 2202 and 42 U.S.C. SS 1983, 1988.

STATEMENT OF FACTS

Petitioner Thomas W. Jones was nominated in a caucus of the Libertarian Party ending on June 1, 1986 for the office of Michigan state senator, district 3. On June 2, 1986 Jones submitted a certificate of nomination, a certificate of acceptance and

an affidavit of identity to Respondent Lawrence N. Verbiest requesting that Jones's name and the logo of the Libertarian Party of Michigan be placed on the November 2, 1986 general election ballots in state senate district 3. Mr. Verbiest was the Wayne County [Michigan] Director of Elections and the agent of the Wayne County Board of Election Commissioners which prepares the general election ballots, MCL 168.689. Mr. Verbiest rejected such papers citing MCL 168.686a which requires that "new" minor parties (such as the Libertarian Party in 1986 in Michigan) to have filed ballot access petitions at least 3 months (May 5, 1986) prior to the August primary election (August 5, 1986), MCL 168.685, and to have held their county or state nominating conventions not later than 64 days (June 2, 1986) before the primary. Mr. Jones filed a complaint (R1) on June 10, 1986 claiming that Verbiest's rejection of the nominating papers violated that part of the Article 1, Section 10 of the Constitution of the United States which reads- "No State shall ... grant any Title of Nobility." and Section 1 of the Fourteenth Amendment. Jurisdiction was asserted under U.S. Code, Title 28, SS 1331 and 1343 (a)(3) with remedial sections Title 28, SS 2201 and 2202 and Title 42, SS 1983 and 1988 applying. On July 24, 1986 the District Court

issued a notice for a scheduling conference on October 14, 1986 (R3). On August 5, 1986 a regular primary election was held in Michigan for nomination of the candidates of the "major" political parties. On August 11, 1986 Jones submitted motions for leave to amend the complaint (R4) and for emergency summary judgment (R5) along with a brief in support of the complaint and such two motions (R6). On August 13, 1986 the Libertarian Party of Michigan by its counsel moved to intervene as a party plaintiff (R7). On August 25, 1986 Verbiest filed a response and brief opposing the summary judgment motion (R9). On September 2, 1986 Jones filed a reply brief (R10).

In late September, 1986 the ballots for the November 2, 1986 general election were printed without Jones' name on them. On October 14, 1986 the Libertarian Party by its counsel submitted its proposed intervening complaint (R 11). The scheduling conference was held for about 10 minutes between the District Judge, Mr. Jones and counsel for Mr. Verbiest (without counsel for the Libertarian Party of Michigan). On November 2, 1986 the general election was held and Jones was not elected. On November 17, 1986 the District Court issued an order of dismissal dismissing the case without prejudice (R12). On December 9,

1986 Jones filed a notice of appeal of such order of dismissal to the United States Court of Appeals for the Sixth Circuit (R13). In early 1987 Mr. Verbiest was succeeded in office by Ed Carey, Jr. On January 4, 1988 a 3 judge panel of the Court of Appeals affirmed the judgment of the District Court. This petition for a writ of certiorari follows.

ARGUMENT

I. SUMMARY

28 U.S.C. § 1343 (a) (3) was repealed by implication, in whole or part, by the 1980 amendment of 28 U.S.C. § 1331.

The failure to rule on an emergency motion for summary judgment in a ballot access case with time deadlines for the printing of ballots violates the Federal Rules of Civil Procedure.

The abstention doctrine violates the acts of Congress defining the jurisdiction of the U.S. District Courts and is thus unconstitutional.

If the abstention doctrine is constitutional it is improper to use it when there was no state court case pending and the statutes have been repeatedly construed and there is a certification procedure for state law questions.

Ballot access laws that are not equal for all candidates for the

same office violate the No Title of Nobility Clause of Art. I, Sec. 10 and Section 1 of the Fourteenth Amendment.

42 U.S.C. S 1983 has been badly misconstrued.

2. 1980 AMENDMENT OF 28 U.S.C. S 1331

In Lynch v. Household Finance Corp., 405 U.S. 538, 549 n. 17 (1972) this Court noted that

> "A series of particular statutes grant jurisdiction, without regard to the amount in controversy, in virtually all areas that otherwise would fall under the general federal-question statute. Such special statutes cover: [citing 19 district court jurisdictional sections in Title 28]".

In 1980 the Congress amended S 1331 and removed the amount in controversy language. Of interest is this Court's comments about the equivalent jurisdictional statute in the District of Columbia in Kendall v. United States, 12 Pet. (37 U.S.) 524, 622- 626 (1838). 28 U.S.C. S 1343 (a) (3) (as well as many other jurisdictional statutes) has been repealed by implication, in whole or part, even though repeals by implication are disfavored Lynch, at 549.

3. SUMMARY JUDGMENT MOTION IMPROPERLY IGNORED

The District Court's failure to rule on the August 11, 1986 plaintiff's emergency motion for summary judgment was improper

under part IIA of Anderson v. Liberty Lobby, Inc., 477 U.S. ____, 106 S.Ct. 2505, 91 LEd2d 202, 211-214 (June 25,1986) and Celotex Corp. v. Catrett, 477 U.S. ____, 106 S.Ct. 2548, 91 LEd2d 265, 273-276 (June 25, 1986). Ballot access election cases should especially be resolved as quickly as possible via summary judgments due to time deadlines for printing ballots.

4. ABSTENTION UNCONSTITUTIONALITY

The District Court used the abstention doctrine and dismissed the case without prejudice and the Court of Appeals affirmed such dismissal. It is respectfully submitted that the abstention doctrine of this Court starting with Railroad Commission of Texas v. Pullman Co., 312 U.S. 496 (1941) violates Art. I, Sec. 1, Art. 1, Sec. 8, cl. 18 (Necessary and Proper Clause), Art. III, Sec. 1, Art. III, Sec. 2, Cl.1, Art. VI (Supremacy Clause as relates to Acts of Congress) and Section 5 of the Fourteenth Amendment such that Pullman and all of its progeny should be overruled.

Before Pullman, this Court repeatedly held that the Congress defined the jurisdiction of the lower federal courts, Mayor v. Cooper, 6 Wall. 247, 251-252 (1867), Insurance Co. v. Dunn, 19 Wall. 214, 226 (1873) and that it was the duty of the federal courts to take jurisdiction as provided by Acts of Congress, Cohens

v. Virginia, 6 Wheat 264, 404 (1821), Fisher v. Cockerell, 5 Pet. 248, 259 (1831), Hyde v. Stone, 20 How. (61 U.S.) 170, 175 (1857), Willcox v. Consolidated Gas Co. 212 U.S. 19, 39 (1909), Kline v. Burke Construction Co., 260 U.S. 226, 234 (1922).

This Court even said writs of mandamus could be directed to the lower federal court judges who did not take jurisdiction after proper service, In re Grossman, 177 U.S. 48, 49-50 (1900).

This Court has recently declared that it does not "sit as a super- legislature", American Tobacco Co. v. Patterson, 456 U.S. 63, 72 n. 6 (1982) and has again affirmed the separation of powers principle, Bowsher v. Synar, 478 U.S. _____, 106 S.Ct. 3181, 3186- 3189, 92 LEd2d 583 (1986).

The underlying possible problem recognized in Pullman about federal court constructions of state laws being overruled by state court constructions of such state laws, 312 U.S., at 500, is a problem for the Congress. The Courts take the law as they find it and it is for the Congress to provide the judicial resources necessary to execute its mandates. Reiter v. Sonotone Corp., 442 U.S. 330, 344 (1979). If the Congress does not want the lower federal courts to construe state laws on an original jurisdiction basis then the Congress can rewrite the laws regarding jurisdiction

over parties, subject matter (i.e. acts or omissions), remedies, times and places.

5. ABSTENTION IMPROPER IN THIS CASE

There was not any pending state court case when the District Court dismissed this case on abstention grounds. The decision of the District Court to abstain is very strange since the federal courts have repeatedly construed the Michigan ballot access system without any need to abstain. Socialist Workers Party v. Hare, 304 F. Supp. 534 (E.D. Mich 1969); Jones v. Hare, 440 F2d 685 (CA 6, 1971) [Jones I], cert den 404 U.S. 911 (1971); Communist Party v. Austin, 381 F. Supp. 554 (E.D. Mich 1974) (3 judge court); Hudler v. Austin, 419 F. Supp. 1002 (E.D. Mich 1976) (3 judge court), summ aff'd sub nom Allen v. Austin, 430 U.S. 924 (1977); McCarthy v. Austin, 423 F. Supp. 990 (W.D. Mich 1976) (3 judge court); Dean v. Austin, 602 F2d 121 (CA 6 1979), cert den 444 U.S. 1045 (1980); Hall v. Austin, 495 F. Supp. 782 (E.D. Mich 1980); Goldman-Frankie v. Austin, 727 F2d 603 (CA 6, 1984) (deeming Jones I to have been overruled by later cases of this Court) and Johnson v. Austin, 595 F. Supp. 103 (E.D. Mich 1984).

Neither the District Court or the Court of Appeals gave any

indication about exactly what language in the statutes are "uncertain" so that Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 236- 237 (1984) was violated. See also City of Houston, Texas v. Hill, 482 U.S. ____, 107 S.Ct. 2502, 2512- 2515, 96 LEd2d 398 (1987).

The District Court also failed to make use of the certified question procedure in U.S. District Court Rules, Eastern District of Michigan, Rule 28 (see appendix D) and Michigan Court Rules 7.305 (ibid), Bellotti v. Baird, 428 U.S. 132, 150- 151 (1976) and also failed to retain jurisdiction, American Trial Lawyers Association v. New Jersey Supreme Court, 409 U.S. 467, 469 (1973).

6. UNEQUAL BALLOT ACCESS LAWS ARE UNCONSTITUTIONAL

In Socialist Workers Party v. Secretary of State, 412 Mich 571, 317 NW2d 1 (1982) the Michigan Supreme Court extensively reviewed the ballot access system for new parties and noted "Prior to the enactment of [Michigan] 1976 P[ublic] A[ct] 94, 'new' political parties could secure a place on the November ballot by complying with a petition requirement. The petition requirement has been continued." 412 Mich, at 587.

A candidate for state senator (a district office) gets his or her

name printed on the general election ballot in one of four separate and unequal ways- 1. by winning in a "old major" statewide party's primary, MCL Secs. 168.162, 168.163, 168.532; 2. by being nominated in a caucus or convention of an "old minor" statewide party, MCL Secs. 168.532, 168.560a, 168.686a; 3. by being nominated in a caucus or convention of a "new minor" statewide party, MCL Secs. 168.685, 168.686a; or 4. by court order or administrative action in the case of independent candidates, Goldman- Frankie v. Austin, 727 F2d 603 (CA6, 1984).

Michigan has no law regarding the formation of new political parties in any district (even if all electors in the district wanted to vote for the candidates of such party in such district), Op. Att. Gen. 1984, No. 6230, p. 320.

In Brown v. Board of Education, 347 U.S. 483, 495 (1954) this court said

> "[I]n the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. [Plaintiffs] are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."

The same principle applies to ballot access laws for all candidates for the same elective office. Unfortunately such Brown

comments did not appear in Williams v. Rhodes, 393 U.S. 23 (1968) or any of the Williams progeny. The Equal Protection Clause requires that ballot access laws for all candidates for the same office be equal. See by analogy Moore v. Ogilvie, 394 U.S. 814 (1969) (spread signature state law making voters signing petitions unequal violates Equal Protection Clause). All the ballot access cases since Williams have been wrongly decided or rightly decided for the wrong reasons and should be overruled.

MCL Sec. 168. 532 gives ballot access for "major" party candidates based on previous election results for a specific candidate (secretary of state) of any such "major" party. Such "heredity" based laws violate the No Title of Nobility Clause of Art. I, Sec. 10 of the Constitution. The No Title of Nobility Clause has its origin in the heredity based nature of British society as of 1776. See Blackstone's Commentaries, Book I, c. 5, p. 227 (St. George Tucker edition, 1803 reprinted 1969), Id., c. 7, p. 271, Id., c. XII, pp. 397, 399, 401, 402, 403 and 406- 407. Seven of the pre-1787 state constitutions had anti- special class declarations. See The Federal and State Constitutions Compiled by Ben: Perley Poore (2nd ed., 1924 reprinted 1972), pp. 1909, 1541, 820, 1409, 958, 1281, and 1868. State laws giving special rights,

privileges and immunities based on heredity elements violate the no title of nobility clause of Art. I, Sec. 10. This Court has not yet construed such clause.

7. MISCONSTRUCTION OF 42 U.S.C. S 1983

This Court has catastrophically misconstrued 42 U.S.C. S 1983 since at least 1961 by failing to distinguish between unconstitutional acts or omissions by state persons done under color of state law from those done under state office. See Flanders v. Tweed (Tweed's Case), 16 Wall. (83 U.S.) 504, 518-519 (1873), Tindal v. Wesley, 167 U.S. 204, 219-221 (1897) and McCain v. Des Moines, 174 U.S. 168, 174-175 (1899).

There has also been a tragic failure to review the veto of the 1866 Civil Rights Bill the overriding of such veto and the resulting 1866 Civil Rights Act. 14 Stat. 27. On March 27, 1866 the Senate received President Johnson's veto message of the 1866 civil rights bill. Congressional Globe, 39th Congress, 1st Session, pp. 1679-1681:

> [After President Johnson cited section 1 of the bill] "Thus a perfect equality of the white and black races is attempted to be fixed by Federal law, in every State of the Union, over the vast field of State jurisdiction covered by these enumerated rights. In no one of these can any State ever exercise any power of discrimination between the different races." ... [After citing

section 2 of the bill] " This section seems to be designed to apply to some existing or future law of a State or Territory which may conflict with the provisions of the bill now under consideration. It provides for counteracting such forbidden legislation by imposing fine and imprisonment upon the legislators who may pass such conflicting laws, or upon the officers or agents who shall put, or attempt to put, them into execution. It means an official offense, not a common crime committed against law upon the persons or property of the black race. Such an act may deprive the black man of his property, but not of the right to hold property. It means a deprivation of the right itself, either by the State judiciary or the State Legislature. It is therefore assumed that under this section members of State Legislatures who should vote for laws conflicting with the provisions of the bill; that judges of the State courts who should render judgments in antagonism with its terms; and that marshals and sheriffs, who should, as ministerial officers, execute processes, sanctioned by State laws and issued by State judges, in execution of their judgments, could be brought before other tribunals and there subjected to fine and imprisonment for the performance of the duties which such State laws might impose." at 1680. ... "They [details of the bill] interfere with the municipal legislation of the States, with the relations existing exclusively between a State and its citizens, or between inhabitants of the same State- an absorption and assumption of power by the General Government which, if acquiesced in, must sap and destroy our federative system of limited powers, and break down the barriers which preserve the rights of the States." at 1681.

On April 4, 1866 the Senate took up the veto message. Senator Trumbull did most of the talking in supporting an override of the veto. Globe, pp. 1755-1761.

"But, sir, the granting of civil rights does not, and never did in this country, carry with it rights, or, more properly speaking, political privileges. A man may be a citizen in his country without a right to vote or without a right to hold office. The right to vote and hold office in the States depends upon the legislation of the various States; the right to hold certain offices under the Federal Government depends upon the Constitution of the United States." at 1757.

[After quoting section 2 of the bill he noted] "Who is to be punished? Is the law to be punished? Are the men who make the law to be punished? Is that the language of the bill? Not at all. If any person, 'under color of any law,' shall subject another to the deprivation of a right to which he is entitled, he it to be punished. Who? The person who, under the color of the law, does the act, not the men who made the law. In some communities of the South a custom prevails by which different punishment is inflicted upon the blacks from that meted out to whites for the same offense. Does this section propose to punish the community where the custom prevails? Or is it to punish the person who, under color of the custom, deprives the party of the his right? It is a manifest perversion of the meaning of the section to assert anything else.

But it is said that under the provision judges of the courts and ministerial officers who are engaged in the execution of any such [discriminatory] statutes may be punished; and that is

made an objection to this bill. I admit that a ministerial officer or a judge, if he acts corruptly or viciously in the execution or under color of an illegal act, may be and ought to be punished; but if he acted innocently the judge would not be punished. What is the crime? It is a violation of some public law, to constitute which there must be an act and a vicious will in doing the act; or, according the definition in some of the law-books, to constitute a crime there must be a violation of a public law, in the commission of which there must be a union or joint operation of act or intent or criminal negligence; and a judge who acted innocently , and not viciously or oppressively, would never be convicted under this act. But, sir, if he acted knowlingly, viciously, or oppressively, in disregard of a law of the United States, I repeat, he ought to be punished, and it is no anomaly to prescribe a punishment in such a case. Very soon after the organization of this Government, in the first years of its existance, the Congress of the United States provided for punishing officers who, under color of State law, violated the laws of the United States. I read from the twenty-sixth section of an act [1790 Crimes Act] passed in 1790, providing for the punishment of certain offenses against foreign ministers, consuls, &c.: 'That in case any person or persons shall sue forth or prosecute any such writ or process, such person or persons, and all attorneys or solicitors prosecuting or soliciting in such case, and all officers executing any such writ or process being thereof convicted, shall be deemed violators of the laws of nations and disturbers of the public repose, and imprisoned not exceeding three years, and fined at the discretion of the court.'[1 Stat. 118] By this provision all officers executing

any writ or process in violation of the laws of the United States are to be subject to a much longer imprisonment than is provided by this bill.", at 1758. [See also Sec. 25 of the act]

He went on citing various statutory crimes and civil actions involving judges and court officers in a habeas corpus context. Ibid.

"A law without a penalty, without a sanction, is of little value to anybody." Ibid.

"These words 'under color of law' were inserted as words of limitation, and not for the purpose of punishing persons who would not have been subject to punishment under the act if they had been omitted. If an offense is committed against a colored person simply because he is colored, in a State where the law affords him the same protection as if he were white, this act neither has not was intended to have anything to do with his case, because he has adequate remedies in the State courts; but if he discriminated against under color of State laws because he is colored, then it becomes necessary to interfere for his protection.

The assumption that State judges and other officials are not to be held responsible for violations of United States laws, when done under color of State laws or customs, is akin to the maxim of the English law that the King can do no wrong. It places officials above the law. It is the very doctrine out of which he rebellion was hatched.

Everything that was done by that wicked effort to overturn our Government was done under color of law. The rebels insisted that they had a right to secede. They passed ordinances

of secession; they set up State governments; and all that they did was done under color of law. And if parties committing these high crimes are to go free because they acted under color of law, why is not Jeff.[erson] Davis and every other rebel chief discharged at once? Why did this country put forth all of its resources of men and money to put down the rebellion against the authority of the Government, except it a right to do so, even as against those who were acting under color of law? [Robert E.] Lee, with his rebel hordes, thundering upon the outskirts of this very city, was acting under color of law. Every judge who has held a court in the southern States for the last four years, and has tried and convicted of treason men guilty of no other offense than loyalty to the Union, acted under color of law.

Sir, if we had authority by the use of the Army and the war power to put down rebels acting under color of law, I put the question to every lawyer if we had not authority to do that through the courts and the judicial tribunals if it had been practicable? " Ibid.

"The right to punish persons who violate the laws of the United States cannot be questioned, and the fact that in doing so they acted under color of law or usage in any locality affords no protection, because by the Constitution that instrument and the laws passed in pursuance thereof are the supreme law law of the land, and every judge, not only of the United States, but of every State court, is bound thereby." at 1759.

The veto was overridden in the Senate on April 6, 1866, Globe, p. 1809, and in the House on April 9, 1866, Globe, p. 1861 so that the bill became a law.

President Johnson's and Senator Trumbull's comments catastrophically (due mainly to very poor research by United States legal officers) do not appear at length in cases involving 18 U.S.C. § 242 such as United States v. Classic, 313 U.S. 299, 325-326 (1941), Screws v. United States, 325 U.S. 91, 107-117 (Opinion of Douglas, J.), 115-116 (Opinion of Rutledge, J.) or 141-149 (Roberts, J. dissenting) (1945), Williams v. United States, 341 U.S.97, 99-100 (1951) (Williams II), United States v. Price, 383 U.S. 787, 791-796 (1966), Dennis v. Sparks, 449 U.S. 24, 27-28 (1980) or the "modern" series of 42 U.S.C. § 1983 cases beginning with Monroe v. Pape, 365 U.S. 167 (1961).

In "plain language" in 42 U.S.C. § 1983 the "statute, ordinance, regulation, custom or usage, of any State or Territory" on its face violates the Constitution or laws of the United States. The "person" executively or judicially enforces or threatens to enforce any such unconstitutional "statute, etc., or usage" and thus "subjects, or causes to be subjected" "any citizen of the United States or other person with the jurisdiction thereof" "to the deprivation (i.e. violation) of any rights, privileges, or immunities secured by (i.e. declared in) the Constitution and laws". Such "person" may be a

state or local executive or judicial officer or a private person. The statute does not apply, as presently written, to legislative officers or bodies (or for that matter the voters) who enact any such unconstitutional "statute, etc., or usage".

Also as a matter of statutory construction, state or local governments as such are not liable for any such unconstitutional "color of law" acts by any such state or local officer although the Congress can make such governments liable by additional language.

However, if any state or local officer (that is, "under state or local office"), legislative, executive or judicial, or any private person, whether or not under color of state or local law, violates any other person's rights, privileges, or immunities secured by (i.e. declared in) the Constitution, a law or a treaty of the United States then such officer or private person is subject to civil liability via 28 U.S.C. S 1331 (if the Constitution, law or treaty allegedly violated gives standing in a private civil action to the allegedly injured other person).

A state or local government can be civilly liable in a 28 U.S.C. S 1331 case (a) "directly" if the state or local government as such "directly" violates the Constitution, laws or treaties of the United States (noting the fictions in such areas as government contracts

and government controlled property) or (b) "indirectly" if state or local government officers violate the Constitution, laws or treaties of the United States and the Congress provides a constitutionally permissable remedy against the state or local government (especially a remedy enforcing the various amendments to the Constitution which contain restrictions on the States and thus state and local officers).

Confusion in government and/or government officer cases has arisen due to the various possible elements 1) parties- federal or state or local governments or government officers or private persons (7 possibilities); 2) the substantive "law" violated- federal, state or local; 3) which party does any alleged injury (i.e. violates which substantive "law"); 4) the defenses- federal, state or local and 5) the remedial "law", if any- federal, state or local.

8. PRAYER

Petitioner Jones prays that this Honorable Court grant this petition for writ of certiorari to correct the errors of the lower courts.

Respectfully submitted,

Dated March 21, 1988

EMERY E. JACQUES, JR.
JACQUES AND ZIEM
990 DECKER RD.
WALLED LAKE, MI 48088
(313) 624- 6330
Counsel for Petitioner

APPENDIX A
NOT FOR PUBLICATION
No. 86-2188
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
Decided and filed January 4, 1988

THOMAS W. JONES,
Plaintiff- Appellant,
v.
LAWRENCE N. VERBIEST,
Defendant-Appellee.
_____/

BEFORE: KEITH, JONES AND MILBURN, Circuit Judges.

PER CURIAM. Plaintiff Thomas W. Jones appeals the judgment of the district court ordering abstention from the determination of plaintiff's claim regarding the constitutionality of Michigan election laws. For the reasons that follow, we affirm.

I.

Plaintiff Thomas W. Jones alleges that he was nominated in a caucus of the Libertarian Party on June 1, 1986, for the office of Michigan State Senator from District Three. On June 2, 1986 Jones submitted a certificate of nomination, a certificate of acceptance, a party vignette, and an affidavit of identity to defendant Lawrence N. Verbiest, requesting that Jones' name and the vignette of the Libertarian Party of Michigan be placed on the November 4, 1986 general election ballots in State Senate District Three. Verbiest was

the Wayne County Director of Elections.

Verbiest rejected plaintiff's submission on the ground that M. C. L. A. S 168. 686a requires new, minor parties such as the Libertarian Party to have filed ballot access petitions at least three months prior to the August primary and to have held their county or state nominating caucuses not later than sixty- four days before the primary. Because the Michigan Secretary of State had not certified the Libertarian Party as eligible for placement on the general election ballot, Verbiest was not authorized to accept Libertarian Party nominations or place them on the ballot.

Plaintiff subsequently filed an action in the district court against defendant Verbiest, requesting a declaration of the unconstitutionality of the state statutes, an order placing his name and the Libertarian Party vignette on the November 1986 general election ballot, and also requesting the costs of the litigation. Defendant answered, and plaintiff filed a motion for summary judgment. The defendant filed a response, and the district court dismissed the matter without prejudice on November 13, 1986.. The district court concluded that "[t]he issues raised in plaintiff's complaint present questions of state law that should be first

addressed by the courts of the State of Michigan, in order to avoid a constitutional decision that might be rendered unnecessary by a subsequent state interpretation of the statutes in question." This appeal followed.

II.

In concluding that abstention was proper, the district court relied upon the fact that resolution of the issues presented in plaintiff's complaint by reference to state law could render a federal constitutional decision unnecessary. Thus, the district court was considering this case within the framework of the most common type of abstention, as developed by the Supreme Court in Railroad Commission v. Pullman Co., 312 U.S. 496 (1941). In Pullman, the Supreme Court concluded that when a construction of state law may render a federal constitutional decision unnecessary, the federal court should abstain in order to give the state courts the first opportunity to pass on the validity of their own laws.

Pullman abstention is appropriate "when difficult and unsettled questions of state law must be resolved before a substantial federal constitutional question can be decided." Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 236 (1984). When a state constitution

contains a unique provision, and evaluation of the challenged statute under this unique provision may obviate the need for a decision of federal constitutional dimension, abstention is particularly appropriate. In City of Meridan v. Southern Bell Telephone and Telegraph Co., 358 U.S. 639 (1959) (per curiam), the plaintiff argued that it was not subject to the provisions of the a Mississippi statute imposing a charge on public utilities. Plaintiff further argued that if the statute was applicable, it violated the state and federal constitutions. The district court concluded that the statute offended both the state and federal constitutions and was beyond the power of the state legislature to enact. The judgment was affirmed on appeal and was subsequently presented to the Supreme Court for resolution. The Supreme Court vacated the judgment of the court of appeals and ordered the district court to abstain.

> ["]Proper exercise of federal jurisdiction requires that controversies involving unsettled questions of state law be decided in the state tribunals preliminary to a federal court's consideration of the underlying federal constitutional questions. That is especially desirable where the questions of state law are enmeshed with federal questions. Here, the state law problems are delicate ones, the resolution of which is not without substantial difficulty -- certainly for a federal court. In such a case, when the state court's

> interpretion of the statute or evaluation of its validity under the Federal Constitution, the federal court should hold its hand, lest it render a constitutional decision unnecessarily.["]

Id. at 640-41 (citations omitted). The continuing vitality of the proposition espoused in City of Meridan recognized by the Supreme Court in Midkiff, 467 U.S. at 237 n. 4, and Pennzoil Co. v. Texaco, Inc., [____ U.S. ____,] 107 S. Ct. 1519 (1987).

We conclude that the teachings of Pennzoil and City of Meridan militate in favor of the conclusion that abstention is proper. We note that the Michigan Constitution contains a unique provision more narrowly tailored to the plaintiff's claim than the equal protection clause of the Fourteenth Amendment to the United States Constitution. Specifically, art. 2, § 4 of the Michigan Constitution gives the legislature the authority to regulate the place and manner of elections. It directs the legislature to "enact laws to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting."

The Michigan Supreme Court has utilized this constitutional provision to strike down Michigan laws challenging ballot access

requirements. See Socialist Workers Party v. Secretary of State, 412 Mich. 571, 317 N.W. 2d 1 (1982). Because a determination that the Michigan law in question violates this unique constitutional provision may obviate the need for a decision based on the United States Constitution, we conclude that the district court was correct in ordering abstention.

III.

Accordingly, for the reasons stated above, the judgment of the district court is AFFIRMED.

APPENDIX B
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION
CASE NO. 86-CV-72480-DT
HON. BARBARA K. HACKETT
Entered November 13, 1986

THOMAS W. JONES,
Plaintiff,

v.

LAWRENCE N. VERBIEST,
Wayne County Elections Director,
Defendant.
_____/

ORDER OF DISMISSAL

Plaintiff has instituted this action seeking declaratory judgment that the Michigan election ballot system is unconstit-

utional under the Equal Protection Clause of the United States Constitution. Plaintiff was selected by the Libertarian Party as its nominee for state senator for the third district. He submitted certificates of nomination and acceptance to the Wayne County Elections Director, which were refused by the Elections Director pursuant to MCL § 168. 162 and related statutes.

This court declines to exercise jurisdiction in this matter in view of established rules of comity. The issues raised in plaintiff's complaint present questions of state law that should be first addressed by the courts of the State of Michigan, in order to avoid a constitutional decision that might be rendered unnecessary by a subsequent state interpretation of the statutes in question. See Chicago, Duluth and Georgian Bay Transit Co. v. Nims, 252 F.2d 317 (6th Cir. 1958); General Foods Corporation v. Henderson 334 F. Supp. 19, 22 (D. N. M. 1971). Accordingly,

IT IS HEREBY ORDERED that this case be dismissed without prejudice.

/s/ Barbara K. Hackett
BARBARA K. HACKETT
UNITED STATES DISTRICT JUDGE

DATED: November 13, 1986

Appendix C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION
NO. 86-CV-72480-DT
Filed June 10, 1986

THOMAS W. JONES,
Plaintiff

v.

LAWRENCE N. VERBIEST,
Wayne County Elections Director,
Defendant

_____/

COMPLAINT

Plaintiff alleges:

1. This action arises under (a) the following portions of the Constitution of the United States- (1) that part of Article I, Section 10 which reads "No State shall ..... grant any Title of Nobility." and (2) Section 1 of the Fourteenth Amendment and (b) United States Code (1982 ed.) Title 28, Sections 1331, 1343(a)(3), 2201 and 2202 and Title 42, Sections 1983 and 1988.

2. Plaintiff Thomas W. Jones is (a) a citizen of the United States, (b) a citizen of the State of Michigan, (c) an elector of the State of Michigan residing in precinct 20-1, City of Detroit, Wayne County.

3. Defendant Lawrence N. Verbiest is individually a citizen of the United States and a citizen of the State of Michigan.

4. Defendant Lawrence N. Verbiest is officially Wayne County

Elections Director and as such is responsible for carrying into execution the election laws of the State of Michigan in Wayne County and is representative of all the election officers in Wayne County who are in any way involved in causing the printing of ballots in Wayne County.

5. On June 2, 1986 Plaintiff Jones submitted to Defendant Verbiest a party vignette, a Certificate of Nomination, a Certificate of Acceptance, and an Affidavit of Identity relating to his nomination as a candidate of the Libertarian Party of Michigan for State Senator, District 3. Such 4 items are attached as Plaintiff's Exhibit 1.

6. Defendant Verbiest, acting under color of law, namely MCL Sec. 168.686a, rejected the submission of such 4 items as appears in the Statement of Thomas W. Jones attached as Plaintiff's Exhibit 2.

7. Such MCL Sec. 168.686a is closely related to MCL Secs. 168.162, 168.163,168.532 [,168.560a] and 168.685 relating to ballot access by candidates.

8. Defendant Verbiest's paragraph 6 rejection violated the constitutional right of plaintiff Jones to obtain ballot status on an

equal basis with all other candidates, partisan or independent, for the office of State Senator, District 3.

Prayer for Relief

Wherefore Plaintiff prays that this Honorable Court:

1. Adjudge and declare (1) that MCL Secs. 168.162, 168.163, 168.532, [168.560a,] 168.685 and 168.686a violate that part of Article I, Section 10 of the Constitution of the United States which reads "No State shall ..... grant any Title of Nobility." and/or Section 1 of the Fourteenth Amendment and (2) that such two parts of the Constitution require that all candidates, partisan or independent, for a given elective office undergo the same, equal test(s) to obtain ballot status.

2. Enjoin Defendant Verbiest and his successor in office and all other election officers in Wayne County from enforcing MCL Secs. 168.162, 168.163, 168.532, [168.560a,] 168.685 and 168.686a.

3. Direct Defendant Verbiest and all other election officers in Wayne County to place the name and vignette of the Libertarian Party, and the name of Thomas W. Jones on the November 4, 1986 general election ballot in a separate row or column as a candidate

for State Senator, District 3.

4. Adjudge that Plaintiff shall recover his costs in this action from defendant Verbiest as an individual.

5. For such other relief as is just.

Dated June 10, 1986.

/s/ Thomas W. Jones

Thomas W. Jones, Plaintiff

15336 Cruse

Detroit, MI 48227

(313) 837-1123

[Plaintiff's Exhibit 1, page 1]

TO: County Clerk, Wayne County

Certificate of Nomination

The following person was nominated for the indicated office by the Wayne County Libertarian Party at the nominating caucus closing on June 1, 1986. The office indicated is completely contained within the limits of Wayne County, Michigan.

Name/Address	Office
Thomas W. Jones 15336 Cruse	State Senator, District 3

Detroit, MI 48227

Dated: June 1, 1986

/s/ Thomas W. Jones

Thomas W. Jones

Caucus chairman-secretary

15336 Cruse

Detroit, MI 48227

LIBERTARIAN PARTY

[Plaintiff's Exhibit 1, Page 2]

Certificate of Acceptance

I, Thomas W. Jones hereby certify that I accept the nomination of the Libertarian Party for the office of State Senator, District 3 to be voted for at the general election to be held on the 4 day of November, 1986. I reside at 15336 Cruse, Detroit. My post office address is 15336 Cruse, Detroit, MI 48227.

/s/ Thomas W. Jones

[Plaintiff's Exhibit 1, page 3]

Affidavit of Identity

State of Michigan)

County of Wayne) ss.

I, Thomas W. Jones, being duly sworn, depose and say that: ☒ I have not changed my name within the past 12 years. ☐ I have changed my name within the past 12 years and was formerly known as _____. I reside at 15336 Cruse, Detroit, 48227 which is located in the City of Detroit, County of Wayne, state of Michigan. My birthdate is Jan 12, 1944. Soc. Sec. No. 362- 52- 7393. I can be contacted at the following phone number 313 837-1123. I have resided in the county indicated 42 years and in the state of Michigan 42 years. I am registered to vote in Precinct 20-1, of the City of Detroit. I am filing as a candidate for the office of State Senator District 3 on the Libertarian party ticket. I am filing as a candidate for the above office at the Primary Election to be held _____, (or if nominated at party convention at the General Election to be held on Nov. 4, 1986,) for the following term of office: ☒ Regular term , ☐ To fill vacancy- term ending _____, ☐ Other- specify ____. I am filing this affidavit in conjunction with ☐ Nominating petitions containing approximately _____ signatures ☐ Filing fee of $ _____ ☐ Affidavit of candidacy (Judicial Incumbents Only) ☒ Certification of Nomination by party convention and my Certificate of Acceptance. I request that my name appear on the

ballot as follows:

Thomas W. Jones

/s/ Thomas W. Jones

[Notarization by notary public]

Plaintiff's Exhibit 2

Statement of Thomas W. Jones- See 28 U.S.C. Sec. 1746

1. On June 2, 1986 I submitted to Lawrence N. Verbiest, Wayne County Elections Director, a party vignette, a Certificate of Nomination, a Certificate of Acceptance, and an Affidavit of Identity relating to my nomination as a candidate of the Libertarian Party of Michigan in State Senate District 3. Mr. Verbiest rejected my submission citing MCL Sec. 168.686a.

2. I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 10, 1986.

/s/ Thomas W. Jones

Thomas W. Jones

15336 Cruse

Detroit,MI 48227

Appendix D

U.S. District Court Rule, Eastern District of Michigan

Rule 28 Certification of Issues to State Courts

Upon motion or after a hearing ordered by the Judge sua sponte, the Judge may certify an issue for decision to the highest court of the state whose law governs its disposition. An order of certification shall be accompanied by written findings that:

a. the issue certified is an unsettled issue of state law, and

b. the issue certified will likely control the outcome of the federal suit, and

c. certification of the issue will not cause undue delay or prejudice, and

d. citation to precedent, statutory or court rule authority authorizing the state court involved to resolve certified questions.

In all such cases, the order of certification shall stay federal proceedings for a fixed time which shall be subsequently enlarged only upon a showing that such additional time is required to obtain state court decision and is not the results of dilatory actions on the part of the litigants.

In cases certified to the Michigan Supreme Court, in addition to the findings required by this Rule, the United States District Court

must approve an agreed statement of facts which shall be subsequently transmitted to the Michigan Supreme Court by the parties as an appendix to briefs filed therein.

Michigan Court Rule 7. 305 Certificated Questions (in part)

(B) From Other Courts

(1) When a federal court or state appellate court considers a question that Michigan law may resolve and that is not controlled by Michigan Supreme Court precedent, the court may on its own initiative or that of an interested party certify the question to the Michigan Supreme Court.

(2) A certificate may be prepared by stipulation or at the certifying court's direction, and must contain

(a) the case title;

(b) a factual statement; and

(c) the question to be answered.

The presiding judge must sign it, and the clerk must certify it under seal.

(3) [not relevant]

(4) If the Supreme Court responds to the question certified, the clerk shall send a copy to the certifying court under seal.

(5) [not relevant]